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UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,011	01/17/2001	Kevin W. Burrows	MS1-2747US	3590

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EXAMINER
FILIPCZYK, MARCIN R

ART UNIT	PAPER NUMBER
2163	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

<table>
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<tr><td>09/764,011</td><td>BURROWS ET AL.</td></tr>
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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>23 August 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-5,7-19 and 21-66</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-5,7-19 and 21-66</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>17 January 2001</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

This action is responsive to Applicant's RCE request and amendment filed on

August 23, 2005.

To expedite the process of examination Examiner requests that all future correspondences in regard to overcoming prior art rejections or other issues (e.g. amendments, 35 U.S.C. 112, objections and the like) set forth by the Examiner that Applicants provide and link to the most specific page and line numbers of the disclosure where the best support is found (see 35 U.S.C. 132).

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission filed on August 23, 2005 has been entered.

Claims 1-5, 7-19 and 21-66 are pending.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-5, 7-19 and 21-66 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

The basis of this rejection is set forth whether the invention is within the technological

arts.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a method claim to pass muster, the recited steps must somehow apply, involve, use, or advance the technological arts.

In the present case, independent claim 1 only recites an abstract idea. The recited steps of merely creating nodes by successively finding a median is a mathematical construct and do not apply, involve, use, or advance the technological arts since non of the recited steps comprise a practical application. These steps only constitute an idea of how to select a median and do not generate a tangible result.

Since the claimed invention, as a whole, is not within the technological arts as explained above, claim 1 and claims 2-5, 7-19 and 21-66 which depend from claim 1 or contain similar subject matter as claim 1, are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5, 7-19 and 21-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the segment "parent node" is indefinite. It is not clear how a binary

tree data structure is created when the parent node is not linked to any of the left or right side

descendent medians.

Regarding claims 2-5, 7-19 and 21-66 depend from claim 1 or contain similar subject

matter as claim 1 and are rejected on the same basis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5, 7-19 and 21-66 are rejected under 35 U.S.C. 103(a) as best as Examiner is

able to ascertain as being unpatentable over "INTRODUCTION TO ALGORITHMS" by

Cormen, Leiserson and Rrivest (hereinafter "CLR") in view of "Indexing Large Metric Spaces

for Similarity Search Queries" by Bozkaya and Tolga (hereinafter "BT").

Regarding claims 1-5, 7-19 and 21-66, CLR discloses creating and searching (page 388,

CLR) a balanced binary tree using nodes and assigning values (page 386, fig. 19.4, CLR), but

does not expressly teach a method for creating a binary tree from a list of elements, wherein the

list includes left and right side groupings.

(Note: creating a binary balanced tree involves inserting left

and right descendent nodes)

However, BT teaches indexing large metric spaces for similarity search queries (title, BT) in which a binary vp-tree is constructed (binary trees) by subdividing a list into two lists of equal cardinality at the median (pages 6 and 7, section 3.3). BT also teaches breaking up the two lists and forming an additional median (page 10, 3.8 and 3.9, BT).

(Note: binary vp-tree is introduced as a binary tree, see page 5, BT)

Further, selecting a side for processing, where left side groupings are in preference to right side groupings and determining if a list has an even or odd number of elements was a common programming technique before the Applicant's claimed invention used for selecting an appropriate element as the median. Hence, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to create binary tree structures by reading and subdividing the list by use of a median as taught by BT to effectively construct a tree structure including all the elements in the list.

(Note: elements in a list may represent data of any type i.e. logged events)

Response to Amendment

Applicant's arguments filed on August 23, 2005 have been fully considered but they are not persuasive. The arguments and responses are listed below.

Applicant argues on page 22 of the 8/23/05 response that the present claims do not contain any deficiencies.

Examiner disagrees. Applicant has overcome some rejections raised in the prior office actions by amending all the independent claims, however, indefinite issues are still outstanding. The now rejected segment, "parent node" is indefinite because it is not clear how a binary tree data structure is complete when the parent node does not appear to be a part of the structure, as now claimed.

Applicant argues on pages 23-25 of the 8/23/05 response that CLR/BT do not teach separating the list based on whether it has an even or odd number of elements. And even if they did, CLR/BT still generate a different left/right side grouping from the Applicants.

Examiner disagrees. CLB/BT teach most of the elements in the claims as best as the Examiner is able to ascertain and any missing elements not directly disclosed by CLR/BT Examiner ascertains are obvious; such as selecting a side for processing or determining if a list has an even or odd number of elements. As previously explained, BT system uses a method of reading a list of elements of a set to account for the total number of elements in that set, call it "cardinality" (pages 7 and 10), and selects an "arbitrary element" as a starting element of the set S, then using the cardinality BT notes the most distant element from the arbitrary element and based on these two elements, the size of the set is obtained and a median is selected (pages 7 and 10). Thus, BT system is not limited to a given order of elements in a set (list), but instead may choose any element as a starting point to generate a B-tree and uses the obtained cardinality as a basis for determining the starting point, the median, and is similar to odd and even numbers as claimed since the amount of elements in the list (cardinality) changes the median respectively.

Examiner notes that CLR/BT having selected the same median as Applicants generate the same right/left side grouping since the list is split and the median is selected.

Examiner further notes that Applicant's claims are rejected for comprising non-statutory and indefinite subject matter. For details, please refer to the rejections.

With respect to all the pending claims 1-5, 7-19 and 21-66, Examiner respectfully traverses Applicant's assertion based on the discussion and rejections cited above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc R. Filipczyk whose telephone number is (571) 272-4019. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272-4023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MF
November 21, 2005

FRANTZ COBY
PRIMARY EXAMINER